

# EXHIBIT 3

<p style="text-align: right;">957</p> <p>1       Monadnock v. Glasswall - Volume IV 2       record.) 3       DIRECT EXAMINATION 4       BY MR. KLEINHENDLER: 5       Q    Good morning, Mr. Bauso. 6       A    Good morning. 7       Q    Could you explain to the panel 8       your educational and professional 9       background? 10      A    Educational, some college. I 11      have been in the construction industry in 12      various capacities for close to 30 years 13      now. 14      Q    And where have you worked? 15      A    I have worked for a number of 16      different general contractors in the five 17      boroughs. I have worked for an 18      organization that was renovating vacant 19      properties in East New York through City 20      programs. 21           And I have been with Monadnock 22      construction, I believe, 18 years now, 18 23      or 19 years. 24      Q    What is your current title at 25      Monadnock?</p>	<p style="text-align: right;">959</p> <p>1       Monadnock v. Glasswall - Volume IV 2       A    The architectural design of 3       this wall was -- was a major feature of the 4       building. So we actually found Glasswall 5       as a recommendation from somebody on the 6       architectural team, felt like -- knew their 7       work and felt like they were capable of 8       doing a good job with this design. 9       They had only completed one 10      project in New York at that time with 11      Skanska. And I spoke with the individuals 12      involved with that, and they had very good 13      things to say about Glasswall. 14      Q    One second. You spoke to the 15      guys at Skanska? 16      A    Yes. 17      Q    Okay. 18      A    Yes. A guy named David, who I 19      actually knew, had good things to say, 20      verified with a lot of the local references 21      in Miami, where obviously most of their 22      work had been done, spoke to the gentleman 23      at Coastal Construction and other 24      contractors down there. 25           And, obviously, the most</p>
<p style="text-align: right;">958</p> <p>1       Monadnock v. Glasswall - Volume IV 2       A    Current title is president. 3       Q    Did there come a time where you 4       got involved with the Hunters Point parcel 5       A, parcel B project that is the subject of 6       this case? 7       A    Yes. 8       Q    And tell us when you got 9       involved. 10      A    I was part of the team that 11      responded to the City RFP, so really right 12      from the beginning, helping conceive this 13      project, putting together the team, 14      submitting the application to the City, 15      which obviously we won, and overseeing the 16      whole development and construction process. 17      Q    Now, in connection with your 18      role as the construction manager on the 19      case, did you ultimately have 20      responsibility for hiring a curtain wall 21      contractor? 22      A    Yes. 23      Q    What did you do to look for 24      one, and then how did you end up with 25      Glasswall?</p>	<p style="text-align: right;">960</p> <p>1       Monadnock v. Glasswall - Volume IV 2       important part of the vetting process with 3       them and any sub is a large number of 4       meetings that lasted several hours where we 5       would go through with them every detail and 6       every aspect of this project and this wall 7       to make sure that they fully understood the 8       project, fully understood the requirements 9       of the project, and had it covered in a 10      number. 11      Q    So let's just go to show you 12      Exhibit 2. 13           (Previously Marked Exhibit No. 14           2, E-Mail from Mr. Bauso to Federico 15           in March of 2012, Document is 16           introduced into the proceedings.) 17      Q    Which is an E-Mail from you to 18      Federico in March of 2012, do you see that? 19      A    Okay. 20      Q    Okay. We know this, but we 21      want you to describe background. 22           Who is Federico? 23      A    So Federico at the time was the 24      president and my main contact at Glasswall. 25      Q    Okay. And you started having</p>

<p style="text-align: right;">981</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 you thought that your company -- not</p> <p>3 you -- but the company thought that</p> <p>4 the company was at risk.</p> <p>5 And I was told that this is not</p> <p>6 an at-risk CM agreement.</p> <p>7 So could you comment on that?</p> <p>8 THE WITNESS: We were not at</p> <p>9 risk in terms of costs. It was -- you</p> <p>10 know, although there were requirements</p> <p>11 for us to perform and meet dates and</p> <p>12 meet, you know, project budget goals,</p> <p>13 it was structured in a way that it's</p> <p>14 kind of almost as CM agent or cost</p> <p>15 plus type contract. There's no dollar</p> <p>16 amount.</p> <p>17 MS. FODOR: Except for your --</p> <p>18 except for your responsibility for the</p> <p>19 work of your trade contractors.</p> <p>20 THE WITNESS: We have</p> <p>21 responsibility for the work. We are</p> <p>22 responsible for the trades --</p> <p>23 MS. FODOR: Exactly.</p> <p>24 THE WITNESS: -- and we're</p> <p>25 responsible to deliver the project by</p>	<p style="text-align: right;">983</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 been accepted, excluding ongoing litigation</p> <p>3 in Florida and arbitration in New York with</p> <p>4 the project's window manufacturer."</p> <p>5 Do you see that?</p> <p>6 A Yes, I do.</p> <p>7 Q Is it your understanding that,</p> <p>8 although you delivered the project to</p> <p>9 Related, you still have obligations under</p> <p>10 your CM contract with regard to this</p> <p>11 litigation with Glasswall?</p> <p>12 A Yes, that is my understanding.</p> <p>13 CHAIRMAN ROSSI: What date is</p> <p>14 that letter, again?</p> <p>15 MR. KLEINHENDLER: December 3,</p> <p>16 2015. That's when the --</p> <p>17 CHAIRMAN ROSSI: 2015. Okay.</p> <p>18 Thank you.</p> <p>19 CONTINUED EXAMINATION</p> <p>20 BY MR. KLEINHENDLER:</p> <p>21 Q Okay. All right. And there is</p> <p>22 another letter for the other building,</p> <p>23 right? That is Exhibit 197.</p> <p>24 A I understand.</p> <p>25 (Previously Marked Exhibit No.</p>
<p style="text-align: right;">982</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 the date that it's established.</p> <p>3 MS. FODOR: Okay. I just</p> <p>4 wanted to clarify that.</p> <p>5 MR. KLEINHENDLER: You don't</p> <p>6 have to get your books. I want to</p> <p>7 show you 196 up on the screen.</p> <p>8 MR. RENDA: I'm sorry. What</p> <p>9 page?</p> <p>10 MR. KLEINHENDLER: This is --</p> <p>11 this is Exhibit 196. You have seen it</p> <p>12 before. It's in book -- I believe</p> <p>13 book B.</p> <p>14 (Previously Marked Exhibit No.</p> <p>15 196, 12/3/15 Letter from Related about</p> <p>16 Parcel A, Document is introduced into</p> <p>17 the proceedings.)</p> <p>18 CONTINUED EXAMINATION</p> <p>19 BY MR. KLEINHENDLER:</p> <p>20 Q We can just -- do you see this</p> <p>21 letter December 3, 2015, Related, on behalf</p> <p>22 of the owner, is writing a letter. And I</p> <p>23 want you to just scroll it down.</p> <p>24 It says here that:</p> <p>25 "We confirm that the above has</p>	<p style="text-align: right;">984</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 196, 12/3/15 Letter from Related about</p> <p>3 Parcel B, Document is introduced into</p> <p>4 the proceedings.)</p> <p>5 Q That's parcel A.</p> <p>6 And then we have 197 is the</p> <p>7 same thing for parcel B. And it has the</p> <p>8 same carve out.</p> <p>9 Do you see that? Do you see</p> <p>10 that second line, "excluding ongoing</p> <p>11 litigation"?</p> <p>12 Do you see that?</p> <p>13 A I see that.</p> <p>14 Q Okay.</p> <p>15 CHAIRMAN ROSSI: Was there any</p> <p>16 thought when you were negotiating this</p> <p>17 contract -- any thought to having the</p> <p>18 subcontracts just signed directly with</p> <p>19 the owner?</p> <p>20 THE WITNESS: Very few</p> <p>21 conversations. We were holding the</p> <p>22 insurance. And this is just</p> <p>23 traditionally the way we had always</p> <p>24 worked with this client.</p> <p>25 CHAIRMAN ROSSI: Just easier to</p>

<p style="text-align: right;">989</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 about it?</p> <p>3 THE WITNESS: This is -- this</p> <p>4 is standard language that I am</p> <p>5 familiar with. It says that --</p> <p>6 CHAIRMAN ROSSI: Okay.</p> <p>7 Overruled to that extent. Go ahead.</p> <p>8 Go ahead.</p> <p>9 A Any recourse that the owner has</p> <p>10 or responsibilities that we have towards</p> <p>11 the owner are also an obligation of the</p> <p>12 subcontractor. That's what this language</p> <p>13 provided.</p> <p>14 MR. CINQUE: Okay. At this</p> <p>15 point, I would make an objection to</p> <p>16 this line of questioning. I think</p> <p>17 what they're trying to do here is to</p> <p>18 somehow just shoe-strap -- I want to</p> <p>19 make an objection.</p> <p>20 MR. KLEINHENDLER: Are you</p> <p>21 objecting to form?</p> <p>22 MR. CINQUE: The party here is</p> <p>23 Monadnock. It's not the owner of the</p> <p>24 project. And the only claim we are</p> <p>25 facing here is based on the</p>	<p style="text-align: right;">991</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 disagree with it. He's trying to</p> <p>3 say -- I -- I'm imagining -- I know</p> <p>4 you are not arguing it at this</p> <p>5 point -- but that somehow because</p> <p>6 it's a -- because it's a reference</p> <p>7 here, that they have the same rights.</p> <p>8 So, again, I am not agreeing,</p> <p>9 disagreeing.</p> <p>10 No, I understand what your</p> <p>11 argument is, but you're arguing. And</p> <p>12 at this point, we are just getting</p> <p>13 facts.</p> <p>14 MR. CINQUE: Okay. I just want</p> <p>15 the objection because --</p> <p>16 CHAIRMAN ROSSI: Yeah, I know.</p> <p>17 MR. CINQUE: -- I will probably</p> <p>18 have to raise it later because there</p> <p>19 is nothing in the demand for</p> <p>20 arbitration that relates to this, the</p> <p>21 contract that they have with the</p> <p>22 owner. This is a total surprise.</p> <p>23 MS. FODOR: Can I -- can I</p> <p>24 interject something here?</p> <p>25 That is a typical flow-down</p>
<p style="text-align: right;">990</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 subcontract under the demand of</p> <p>3 arbitration.</p> <p>4 That is what we are here to</p> <p>5 litigate.</p> <p>6 Now, apparently, they are</p> <p>7 trying to throw in an agreement we are</p> <p>8 not a party to and saying that they</p> <p>9 are suing under that agreement.</p> <p>10 It's not in the demand for</p> <p>11 arbitration. The party, HPS, the</p> <p>12 owner, does not have an arbitration</p> <p>13 agreement with Glasswall.</p> <p>14 And if they wanted to bring a</p> <p>15 claim, they could have brought a</p> <p>16 lawsuit, but they never did.</p> <p>17 CHAIRMAN ROSSI: Right, but I</p> <p>18 think -- I think -- first of all, what</p> <p>19 he's referring to here -- what the</p> <p>20 witness is testifying at this present</p> <p>21 time, Exhibit 14, is a -- is a</p> <p>22 document that your client is a party</p> <p>23 to.</p> <p>24 So he is just trying to -- I am</p> <p>25 not saying we are going to agree or</p>	<p style="text-align: right;">992</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 provision, and it incor -- the</p> <p>3 subcontract incorporates all of the</p> <p>4 terms of the prime contract as an</p> <p>5 obligation of both your client's</p> <p>6 obligation and his client's</p> <p>7 obligation.</p> <p>8 And I was very interested in</p> <p>9 addressing this just to understand how</p> <p>10 the deal was structured. And so there</p> <p>11 is nothing unusual, I think -- I don't</p> <p>12 think, in having the prime contract</p> <p>13 always kind of like incorporated by</p> <p>14 reference in a subcontract so that the</p> <p>15 subcontractor is bound by all of the</p> <p>16 terms that the prime contractor is</p> <p>17 bound by under the prime contract.</p> <p>18 MR. CINQUE: Yes, but I think</p> <p>19 the argument that I am making is that</p> <p>20 I think there is going to be an</p> <p>21 attempt to somehow argue that they</p> <p>22 stand in the shoes of the owner.</p> <p>23 And, therefore, they're --</p> <p>24 they're asserting the owner's claims</p> <p>25 that the owner might have.</p>

<p style="text-align: right;">1001</p> <p>1 Monadnock v. Glasswall - Volume IV  2 CHAIRMAN ROSSI: No. Okay.  3 (There was a discussion off the  4 record.)  5 MR. RENDA: Just one thing,  6 there's a lot of exhibits; and I don't  7 know if we mentioned this. But we are  8 going to need an index of all your  9 exhibits so that, when we look for  10 something during deliberations, we  11 will be able to find it. Otherwise,  12 we will go through 16 volumes.  13 MR. KLEINHENDLER: Absolutely.  14 MR. RENDA: Okay. And then, I  15 would think, also, if it's not in  16 evidence, you would have discussed  17 that ahead of time; you would give  18 your list that you say is in evidence  19 to your adversary, vice versa.  20 And then, if there is an issue  21 whether or not something went in or  22 not, if you can't work it out, then  23 you bring it to our attention.  24 MR. KLEINHENDLER: Well, that's  25 a great idea. But what I was hoping</p>	<p style="text-align: right;">1003</p> <p>1 Monadnock v. Glasswall - Volume IV  2 up on the screen if you want.  3 And if you recall there was an  4 amendment agreement with Glasswall in 2014.  5 And then in March -- on March 4, 2015, you  6 signed a default letter, okay, to  7 Glasswall. And that's what I have open  8 here Exhibit 160.  9 Just go to the next page.  10 Okay. Now, you see that? Do  11 you remember that?  12 A Yes, I do.  13 Q Now, in here, there is a list;  14 and I am going to page 38118, a list of 30  15 items. Scroll down to the -- see -- stop  16 there.  17 Do you see that?  18 A Yes.  19 Q Now, I want you to point out to  20 panel and then read any of these items that  21 would have prevented you from getting a TCO  22 on -- this relates to which parcel, parcel  23 A.  24 Go ahead.  25 CHAIRMAN ROSSI: You mean a TCO</p>
<p style="text-align: right;">1002</p> <p>1 Monadnock v. Glasswall - Volume IV  2 to do is, when I'm finished with all  3 of my witnesses, I would just read  4 into the record all the exhibits I  5 believe are in.  6 If he wanted to object at that  7 time, he could. So this way, if I've  8 got to still get something in, I want  9 to do it while I still have people  10 here as opposed to having a fight  11 about it, whatever is good for you.  12 CHAIRMAN ROSSI: All right. We  13 will work that out, but that is a good  14 idea to have a list.  15 MR. KLEINHENDLER: Yes, we will  16 give you a list with -- I just want to  17 go to -- we're jumping ahead a second.  18 Q I want to take you -- I want to  19 take you to Exhibit 160.  20 (Previously Marked Exhibit No.  21 160, 3/4/15 Default Letter to  22 Glasswall signed by Greg Bauso,  23 Document is introduced into the  24 proceedings.)  25 Q It's in the second book. It's</p>	<p style="text-align: right;">1004</p> <p>1 Monadnock v. Glasswall - Volume IV  2 on the entire building?  3 MR. KLEINHENDLER: Or any  4 portion thereof.  5 CHAIRMAN ROSSI: Okay.  6 Because -- all right. Go ahead.  7 MS. FODOR: For all the work,  8 not just the Glasswall?  9 MR. KLEINHENDLER: Right.  10 A Just looking at this list now,  11 the first item, obviously, the four terrace  12 doors in parcel B.  13 MR. RENDA: Could you just give  14 us a number. I just need the number.  15 THE WITNESS: Number one.  16 MS. FODOR: Number what?  17 THE WITNESS: Number one.  18 MR. KLEINHENDLER: On page  19 38118.  20 A So certainly number three.  21 Q Read it.  22 A "Replace all broken windows" --  23 Q Okay.  24 A -- "delivered to the project."  25 You know, I just want to add</p>

<p style="text-align: right;">1005</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       two and four, they are certainly a</p> <p>3       possibility, although I wouldn't include</p> <p>4       those for now. But depending on what an</p> <p>5       inspector sees, there is certainly a</p> <p>6       possibility.</p> <p>7       Number eight, "missing metal</p> <p>8       in-fill panels."</p> <p>9       Number nine, "picture frame</p> <p>10      metal for the store front," that certainly</p> <p>11      could have prevented a passing TCO</p> <p>12      inspection.</p> <p>13      Number ten as well, missing</p> <p>14      panels.</p> <p>15      Number 13 certainly, "missing</p> <p>16      limit stops on the windows" certainly is</p> <p>17      something an inspector might have written</p> <p>18      up as a violation.</p> <p>19      Number 16, "missing metal</p> <p>20      copings."</p> <p>21      Number 18, "missing lock sets</p> <p>22      of the balcony doors provided by</p> <p>23      Glasswall."</p> <p>24      Number 19, "missing windows for</p> <p>25      the roof bulkheads."</p>	<p style="text-align: right;">1007</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       A    Yes, I think I recall that.</p> <p>3       Q    Okay. All right. I want you</p> <p>4       to go to this -- this -- do you have it --</p> <p>5       scroll down a little bit so they can look</p> <p>6       at it on the first paragraph.</p> <p>7       Okay. It talks about a notice</p> <p>8       of default --</p> <p>9       (There was a discussion off the</p> <p>10      record.)</p> <p>11      Q    Sorry.</p> <p>12      On March -- I'm in the second</p> <p>13      sentence:</p> <p>14      "On March 4, Monadnock sent</p> <p>15      Glasswall a notice of default detailing</p> <p>16      various defaults by Glasswall of its</p> <p>17      agreements."</p> <p>18      Do you see that?</p> <p>19      A    Yes.</p> <p>20      Q    And I believe there is a typo</p> <p>21      here. Was this March 4, 2014, or 2015 --</p> <p>22      or we can get to it.</p> <p>23      "The notice of default in</p> <p>24      compliance with the agreements provided</p> <p>25      Glasswall with a seven-working-day period</p>
<p style="text-align: right;">1006</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       And the remainder of the items,</p> <p>3       while maybe things needed for substantial</p> <p>4       completion, I don't think would be needed</p> <p>5       for a certificate of occupancy to pass.</p> <p>6       Q    Okay. Do you -- now, go back</p> <p>7       to this document.</p> <p>8       Are you familiar that there is</p> <p>9       a section in your subcontractor agreement</p> <p>10      that requires you to give the other side</p> <p>11      seven days' notice in order to make a</p> <p>12      claim?</p> <p>13      A    Yes, I recall that.</p> <p>14      Q    Okay. I want to take you now</p> <p>15      to Exhibit 171. Okay.</p> <p>16      (Previously Marked Exhibit No.</p> <p>17      171, 3/27/15 Claim with Bonding</p> <p>18      Company, Document is introduced into</p> <p>19      the proceedings.)</p> <p>20      Q    This is already March 27th. Do</p> <p>21      you see that?</p> <p>22      A    Yes, I do.</p> <p>23      Q    And do you recall that, when</p> <p>24      you defaulted out Monadnock, you also put a</p> <p>25      claim in against the bonding company?</p>	<p style="text-align: right;">1008</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       to cure the defaults listed there."</p> <p>3       Do you see that?</p> <p>4       A    Yes, I do.</p> <p>5       Q    Do you agree that this notice</p> <p>6       of default, at least in your mind,</p> <p>7       satisfied the seven-day notice provision?</p> <p>8       A    Yes, that's what I recall.</p> <p>9       Q    Okay. And there were similar</p> <p>10      letters for the other parcel, too?</p> <p>11      A    Yes.</p> <p>12      Q    They're in evidence.</p> <p>13      MR. RENDA: Can you just tell</p> <p>14      me who Greenwall -- Green --</p> <p>15      THE WITNESS: Judah Greenblatt</p> <p>16      at the time was an attorney</p> <p>17      representing Monadnock.</p> <p>18      MS. FODOR: What is the date of</p> <p>19      this letter.</p> <p>20      MR. KLEINHENDLER: March 27,</p> <p>21      2015.</p> <p>22      CONTINUED EXAMINATION</p> <p>23      BY MR. KLEINHENDLER:</p> <p>24      Q    All right. Okay. I'm going to</p> <p>25      go back now to the chronology. So we have</p>



<p style="text-align: right;">1013</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       Okay.</p> <p>3       CONTINUED EXAMINATION</p> <p>4       BY MR. KLEINHENDLER:</p> <p>5       Q   Let's to Exhibit 57, please.</p> <p>6       (Previously Marked Exhibit No.</p> <p>7       57, E-Mail chain, top E-Mail dated</p> <p>8       6/12/13 to Paul Colapinto from</p> <p>9       Federico Balestrazzi, Document is</p> <p>10      introduced into the proceedings.)</p> <p>11      Q   And do you see that there is an</p> <p>12      E-Mail below from Paul to Federico</p> <p>13      acknowledging that he's going to be missing</p> <p>14      some dates, but that there can be no more</p> <p>15      delays?</p> <p>16      Do you see that?</p> <p>17      A   Yes, I do.</p> <p>18      Q   All right. And do you see on</p> <p>19      the top -- and you're copied -- where</p> <p>20      Paul -- where Federico writes back and</p> <p>21      says:</p> <p>22      "I agree with you"?</p> <p>23      A   Yes, I do.</p> <p>24      Q   Were there any conversations</p> <p>25      with you and Federico on or about this time</p>	<p style="text-align: right;">1015</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       THE WITNESS: Yes.</p> <p>3       CHAIRMAN ROSSI: -- either his</p> <p>4       line or the supplier's, right?</p> <p>5       THE WITNESS: So -- so even</p> <p>6       after shop drawings are approved by</p> <p>7       the architect --</p> <p>8       CHAIRMAN ROSSI: Right.</p> <p>9       THE WITNESS: -- the curtain</p> <p>10      wall guys have to -- their engineering</p> <p>11      department has to produce very</p> <p>12      specific cut sheets as to how they</p> <p>13      want the metal, how they want the</p> <p>14      glass sized and fabricated.</p> <p>15      They can't just send the</p> <p>16      approved shop drawings from the</p> <p>17      architect to the metal factory. They</p> <p>18      have to give very, very specific</p> <p>19      engineered cut sheets to their</p> <p>20      fabricators.</p> <p>21      And, you know, it's one of the</p> <p>22      things that we typically ask about,</p> <p>23      because, if that isn't done, we have</p> <p>24      good reason to believe that they are</p> <p>25      not going to be able to get us the</p>
<p style="text-align: right;">1014</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       similar to what's going on in this E-Mail?</p> <p>3       A   Yes. Myself, Andrew, and Paul</p> <p>4       were all having conversations with him at</p> <p>5       that time. We were obviously beginning to</p> <p>6       be very concerned about what was -- what</p> <p>7       was happening down there.</p> <p>8       Q   Go ahead. Just tell me the</p> <p>9       substance -- the substance of the</p> <p>10      conversation and the assurances you were</p> <p>11      getting from him.</p> <p>12      A   Well, at the time he was</p> <p>13      basically saying:</p> <p>14      "Yes, our engineering and our</p> <p>15      release dates are a little bit behind."</p> <p>16      You know, a lot of what we were</p> <p>17      focusing on was whether or not he had</p> <p>18      released metal and glass, which requires a</p> <p>19      significant amount of work by his</p> <p>20      engineering department.</p> <p>21      CHAIRMAN ROSSI: When you say</p> <p>22      "release," you mean that he would have</p> <p>23      to give that -- he would have to have</p> <p>24      his engineers give it to the</p> <p>25      manufacturer --</p>	<p style="text-align: right;">1016</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       windows when they are promising.</p> <p>3       So just as a matter of</p> <p>4       business, this is -- this is one of</p> <p>5       the things we always focus on. And it</p> <p>6       was becoming apparent that their</p> <p>7       engineering department wasn't getting</p> <p>8       these materials released when they</p> <p>9       should have been.</p> <p>10      MS. FODOR: The cut sheets?</p> <p>11      THE WITNESS: The cut sheets to</p> <p>12      the fabricators, yes.</p> <p>13      MS. FODOR: So the shop drawing</p> <p>14      gets prepared by Glasswall?</p> <p>15      THE WITNESS: Correct.</p> <p>16      MS. FODOR: It's sent to the</p> <p>17      architect. And so the shop drawing by</p> <p>18      Glasswall has all kinds of dimensions</p> <p>19      and everything on the shop drawing?</p> <p>20      THE WITNESS: Correct.</p> <p>21      MS. FODOR: Because you want to</p> <p>22      build from that. You send that to the</p> <p>23      architect for approval?</p> <p>24      THE WITNESS: Right.</p> <p>25      MS. FODOR: The architect sends</p>

<p style="text-align: right;">1017</p> <p>1 Monadnock v. Glasswall - Volume IV  2 it back, either rejecting, approved as  3 noted, or just approved?  4 THE WITNESS: Correct.  5 MS. FODOR: What -- who --  6 what -- where does the cut sheet come  7 in?  8 Once that is done, they are  9 remeasuring everything?  10 THE WITNESS: It's really --  11 what it is, is that shop drawing is  12 not in a form that the metal shop can  13 fabricate the metal extrusions from.  14 MS. FODOR: So they redraw the  15 same thing, though?  16 THE WITNESS: So with different  17 information on it, but Glasswall's  18 engineering department then takes that  19 approved shop drawing and produces an  20 engineering sheet for every piece of  21 glass and every piece of metal  22 extrusion that they need to fabricate  23 what is on those shop drawings, and  24 it's approved.  25 MS. FODOR: So just so that I</p>	<p style="text-align: right;">1019</p> <p>1 Monadnock v. Glasswall - Volume IV  2 take you now to Exhibit 68.  3 CHAIRMAN ROSSI: And that's not  4 something that has to be go back to  5 the architect to be approved?  6 THE WITNESS: No, at that  7 point -- no, at that point, it doesn't  8 go back. It's just -- it's really an  9 internal thing after --  10 CHAIRMAN ROSSI: Yeah, but is  11 that something that people in the --  12 based upon your experience, people in  13 the curtain wall business know has --  14 has to be done?  15 THE WITNESS: Yeah, anybody who  16 is ordering metal.  17 CHAIRMAN ROSSI: Yeah, okay.  18 THE WITNESS: So we became  19 aware of this because we were trying  20 to get verification from Keymark and  21 the glass manufacturer as to whether  22 or not they were in production yet.  23 CHAIRMAN ROSSI: Who is  24 Keymark?  25 THE WITNESS: Keymark is the</p>
<p style="text-align: right;">1018</p> <p>1 Monadnock v. Glasswall - Volume IV  2 understand it, so one doesn't build  3 from approved shop drawings; one  4 builds from cut sheets?  5 THE WITNESS: To some degree,  6 yes, that's absolutely true, yes.  7 MS. FODOR: And there could be  8 variations between the shop drawings  9 and the cut sheets?  10 THE WITNESS: There shouldn't  11 be -- there shouldn't be. Those cut  12 sheets take the information off of  13 those approved shop drawings and just  14 put it in a form that the various  15 factories involved in fabricating can  16 then do what they need to do.  17 MS. FODOR: Okay. So is it an  18 extensive exercise, time wise, to take  19 the approved shop drawings and prepare  20 cut sheets?  21 THE WITNESS: Yes, it is.  22 MS. FODOR: Thank you. I  23 didn't know that.  24 THE WITNESS: Yes.  25 MR. KLEINHENDLER: I want to</p>	<p style="text-align: right;">1020</p> <p>1 Monadnock v. Glasswall - Volume IV  2 metal extruder.  3 CHAIRMAN ROSSI: Okay.  4 THE WITNESS: So what we were  5 told is:  6 "Yes, we have a purchase order  7 from Glasswall," meaning they had an  8 agreement, "but we don't have the cuts  9 to release for fabrication yet."  10 So that was the information we  11 were getting. And we were questioning  12 Federico:  13 "We are running out of time  14 here. What's going on?"  15 MS. FODOR: So if one were to  16 give the approved shop drawings to the  17 ultimate supplier, they couldn't --  18 and they didn't have the cut sheets?  19 THE WITNESS: Yes.  20 MS. FODOR: They couldn't do  21 what they were supposed to?  22 THE WITNESS: No. Keymark  23 would not take those shop drawings and  24 be able to fabricate metal extrusions  25 from them.</p>



<p style="text-align: right;">1025</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 MR. KLEINHENDLER: Okay.</p> <p>3 CONTINUED EXAMINATION</p> <p>4 BY MR. KLEINHENDLER:</p> <p>5 Q Let's go to Exhibit 68.</p> <p>6 (Previously Marked Exhibit No.</p> <p>7 68, E-Mail chain, top E-Mail dated</p> <p>8 7/17/13 from Paul Colapinto to</p> <p>9 Federico Balestrazzi, Document is</p> <p>10 introduced into the proceedings.)</p> <p>11 Q Do you recall this E-Mail where</p> <p>12 it appears that Federico is moving the</p> <p>13 dates even a little more?</p> <p>14 A Yes, that's what this</p> <p>15 correspondence seems to say.</p> <p>16 Q Now, in July, are there more</p> <p>17 conversations with Federico about why</p> <p>18 are -- why are these days continuing to</p> <p>19 slip?</p> <p>20 A Yes.</p> <p>21 Q Describe the conversations.</p> <p>22 A Well, again, we can tell that</p> <p>23 these were slipping just based on the fact</p> <p>24 that all the steps leading up to</p> <p>25 fabrication were not -- were not happening.</p>	<p style="text-align: right;">1027</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 meeting down in Miami in August?</p> <p>3 A Yes, I do.</p> <p>4 CHAIRMAN ROSSI: Did you go?</p> <p>5 THE WITNESS: Yes, I did.</p> <p>6 CONTINUED EXAMINATION</p> <p>7 BY MR. KLEINHENDLER:</p> <p>8 Q Well, let's talk about that</p> <p>9 meeting. Who was there? What was</p> <p>10 discussed?</p> <p>11 A So just a little context of</p> <p>12 that meeting, by that point in time,</p> <p>13 Federico had been fired by Ugo Colombo.</p> <p>14 Armand, who was Federico's main, you know,</p> <p>15 right-hand person, had been let go or quit.</p> <p>16 I really don't know.</p> <p>17 So myself, Nick Lembo, the</p> <p>18 founder of Monadnock, and several people</p> <p>19 from Related, flew down to meet with Ugo</p> <p>20 Colombo to discuss what is happening next</p> <p>21 now.</p> <p>22 Q Okay. So tell us about the</p> <p>23 meeting.</p> <p>24 A The basic --</p> <p>25 CHAIRMAN ROSSI: Did</p>
<p style="text-align: right;">1026</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 So Paul and others were</p> <p>3 questioning Federico as to why they weren't</p> <p>4 happening, what's being done to catch up.</p> <p>5 And he wasn't giving answers. And the</p> <p>6 answers he was giving made it obvious that</p> <p>7 he wasn't going to make the dates he had</p> <p>8 previously committed to, even the revised</p> <p>9 dates he had previously committed to.</p> <p>10 Q All right. Okay. I want to</p> <p>11 forward you now to Exhibit 81.</p> <p>12 (Previously Marked Exhibit No.</p> <p>13 81, 8/16/13 Letter from Clinton D.</p> <p>14 Flagg to Greg Bauso, Document is</p> <p>15 introduced into the proceedings.)</p> <p>16 Q This is a letter from Clinton</p> <p>17 Flagg, dated August 16th, to you. Okay.</p> <p>18 Scroll up. Scroll down a little bit.</p> <p>19 And in this he refers to a</p> <p>20 meeting on August 13th in Miami. And then</p> <p>21 he says:</p> <p>22 "Glasswall intends to comply</p> <p>23 with the agreement, and window assembly</p> <p>24 will be ready to ship September 1st."</p> <p>25 So do you recall having a</p>	<p style="text-align: right;">1028</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 Mr. Colapinto go also?</p> <p>3 THE WITNESS: I -- at that</p> <p>4 meeting, I don't believe so, no.</p> <p>5 CHAIRMAN ROSSI: Okay.</p> <p>6 CONTINUED EXAMINATION</p> <p>7 BY MR. KLEINHENDLER:</p> <p>8 A Basically, Ugo's position at</p> <p>9 that time was:</p> <p>10 "I have got a mess here. This</p> <p>11 guy Federico left me with a tremendous mess</p> <p>12 here. I am trying to figure it out. And I</p> <p>13 don't yet have a date for you as to when</p> <p>14 you are going to get these windows. But</p> <p>15 I'm working on figuring it out."</p> <p>16 And, really, there wasn't</p> <p>17 anything more of substance discussed at</p> <p>18 that meeting.</p> <p>19 Q When -- when Federico left, did</p> <p>20 that impact any other employees leaving?</p> <p>21 A Well, Federico really had kind</p> <p>22 of put together that whole team that was</p> <p>23 running that factory, both, you know, on</p> <p>24 the floor and in the fabrication shop and</p> <p>25 in the engineering department.</p>

<p style="text-align: right;">1029</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2             So, yes, other people started.</p> <p>3       I think there was a sense that there were</p> <p>4       problems in the factory and other people</p> <p>5       were starting to leave, also.</p> <p>6       Q     Now, at this meeting in Miami,</p> <p>7       did you ask for a letter from their lawyer</p> <p>8       like the one you got here, Exhibit 81?</p> <p>9       A     No, not at all. And this</p> <p>10       lawyer was not at that meeting.</p> <p>11             (Previously Marked Exhibit No.</p> <p>12       84, 8/27/13 Letter from Clinton D.</p> <p>13       Flagg to Greg Bauso, Document is</p> <p>14       introduced into the proceedings.)</p> <p>15       Q     Okay. Let's go to Exhibit 84.</p> <p>16       There is another letter here from Clinton</p> <p>17       Flagg. And here he's complaining about two</p> <p>18       things, payments and joint check</p> <p>19       agreements.</p> <p>20             Could you discuss what you</p> <p>21       recall that led to this letter in August,</p> <p>22       August 27th?</p> <p>23       A     So one of the things we were</p> <p>24       discovering is that some of these vendors</p> <p>25       had not gotten progress payments from</p>	<p style="text-align: right;">1031</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       think we are coming back to book one.</p> <p>3       We are now on book two.</p> <p>4       MS. FODOR: Sorry. What</p> <p>5       exhibit?</p> <p>6       MR. KLEINHENDLER: 86. This</p> <p>7       is -- we will just do the things from</p> <p>8       yesterday. You will take a minute to</p> <p>9       read it, and then I will go to the</p> <p>10       witness because this is new.</p> <p>11       CHAIRMAN ROSSI: Go ahead.</p> <p>12       (Previously Marked Exhibit No.</p> <p>13       86, 9/9/13 Letter to Chad Zalman from</p> <p>14       Greg Bauso, Document is introduced</p> <p>15       into the proceedings.)</p> <p>16       Q     Okay. So do you see here that</p> <p>17       you are enclosing money for two parcels:</p> <p>18             "And we have been advised by</p> <p>19       your counsel that payment issues with</p> <p>20       suppliers have been resolved."</p> <p>21             Do you recall this letter and</p> <p>22       this happening?</p> <p>23       A     Yes, I do.</p> <p>24       Q     And because of that you sent</p> <p>25       out the payments that were owed?</p>
<p style="text-align: right;">1030</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       Glasswall, and there was some indication</p> <p>3       that that was eventually going to be an</p> <p>4       impediment to getting, you know, glass,</p> <p>5       metal, and other materials fabricated.</p> <p>6       We offered to Glasswall and to</p> <p>7       the vendors, if necessary, to keep things</p> <p>8       moving going to two-party checks, which at</p> <p>9       one point I believe Glasswall was open to.</p> <p>10       What was the rest of your</p> <p>11       question? What else do you want me --</p> <p>12       Q     That's all -- that's what I</p> <p>13       want you to talk about.</p> <p>14       A     This letter.</p> <p>15       Q     Okay. He just says:</p> <p>16             "Please fund our prior payment</p> <p>17       applications."</p> <p>18             Do you see that?</p> <p>19       A     Yep.</p> <p>20       Q     Okay. We are taking you now to</p> <p>21       book two, and I want to take you to</p> <p>22       Exhibit 86.</p> <p>23       MS. FODOR: Are we coming back</p> <p>24       to book one?</p> <p>25       MR. KLEINHENDLER: No, I don't</p>	<p style="text-align: right;">1032</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       A     Correct.</p> <p>3       Q     Now, you are saying here in the</p> <p>4       second:</p> <p>5             "As we have advised you, we</p> <p>6       have not processed payment applications due</p> <p>7       to the fact that you haven't confirmed</p> <p>8       orders."</p> <p>9             Is it your understanding that,</p> <p>10       until they confirmed orders and delivery</p> <p>11       dates, they weren't entitled to material</p> <p>12       payments?</p> <p>13             Well, what are you -- what are</p> <p>14       you saying here?</p> <p>15       A     There were -- I don't remember</p> <p>16       specifically the contract terms regarding,</p> <p>17       you know, when certain progress payments</p> <p>18       were due. But payments were delayed</p> <p>19       because this began with Federico saying,</p> <p>20       you know:</p> <p>21             "Keymark may need a two-party</p> <p>22       or a joint check agreement in order to feel</p> <p>23       more comfortable with the situation going</p> <p>24       forward."</p> <p>25             So we were holding money at</p>

<p style="text-align: right;">1033</p> <p>1       Monadnock v. Glasswall - Volume IV  2       that point trying to figure out whether or  3       not we were making these two-party checks  4       or whether we were doing something else.  5       You know, as this was a critical part of  6       getting this metal released from  7       fabrication.  8       Q   Okay. Nevertheless, you are  9       saying in the next paragraph:  10       "We are giving you the money?"  11       A   Correct.  12       Q   Okay. So by September 9th,  13       Glasswall to your knowledge was not owed  14       any money under the contract?  15       A   I don't recall exactly, but  16       that's -- this is what this appears to say.  17       CHAIRMAN ROSSI: Okay. Is this  18       the first check you sent to them? Do  19       you know?  20       THE WITNESS: No, we had --  21       look, part of the problem was I think  22       by September we had already paid them  23       several millions of dollars for  24       engineering, for performance mock-ups,  25       the material deposits they</p>	<p style="text-align: right;">1035</p> <p>1       Monadnock v. Glasswall - Volume IV  2       verified as realistic.  3       And up to that pint in time, we  4       still had not really gotten that  5       information from Glasswall.  6       Q   Okay. So we are in September  7       now, and are you getting any window  8       deliveries?  9       A   No.  10       Q   So take you to Exhibit 87.  11       (Previously Marked Exhibit No.  12       87, 9/16/13 Fax Letter Notice of  13       Default, Document is introduced into  14       the proceedings.)  15       Q   This is a default letter. Do  16       you see that?  17       A   Yes.  18       Q   Okay. Do you understand --  19       were you involved in the decision to issue  20       this notice of default?  21       A   Yes.  22       Q   So explain why you -- why  23       Monadnock did that.  24       A   At this point in time, even  25       though Glasswall had acknowledged they had</p>
<p style="text-align: right;">1034</p> <p>1       Monadnock v. Glasswall - Volume IV  2       requested -- and we paid deposits to  3       their materials suppliers, which we  4       paid to Glasswall, not directly to the  5       suppliers.  6       So just keep in mind at this  7       point in time we were out of pocket  8       several million dollars, and things  9       were not moving along very well. And  10       it was a growing concern as to where  11       this was all going.  12       CHAIRMAN ROSSI: Okay. Thank  13       you.  14       CONTINUED EXAMINATION  15       BY MR. KLEINHENDLER:  16       Q   Okay. And, finally, you are  17       making a request for a firm schedule as to  18       when you will begin delivering windows.  19       What kind of schedule were you  20       looking for in that last sentence?  21       A   We had been asking for a  22       detailed schedule showing all the  23       milestones leading up to, you know,  24       assembly of windows and delivery to the job  25       site, you know, with dates that could be</p>	<p style="text-align: right;">1036</p> <p>1       Monadnock v. Glasswall - Volume IV  2       a problem, we didn't feel like enough steps  3       were being taken to fix that problem. And  4       we felt we needed to send this default  5       letter out to protect ourselves.  6       Q   And so you sent one for each  7       parcel; that is 86 -- that is 87 and 88.  8       A   Correct.  9       (Previously Marked Exhibit No.  10       88, 9/16/13 Fax Letter Notice of  11       Default, Document is introduced into  12       the proceedings.)  13       Q   Did you also advise the bond --  14       taking out Exhibit 89.  15       (Previously Marked Exhibit No.  16       89, 9/16/13 Bond Notice, Document is  17       introduced into the proceedings.)  18       Q   Did you also call on the bond  19       at this time?  20       A   Yes, absolutely.  21       Q   So tell us what Exhibit 89 is.  22       A   The bond requires -- I wouldn't  23       use the term we were "calling the bond,"  24       but the bond requires that, when you call a  25       bonded subcontractor into default, that you</p>

<p style="text-align: right;">1037</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       give proper notification that this is</p> <p>3       happening to the bonding company. So this</p> <p>4       is really not necessarily calling the bond,</p> <p>5       but it's a notification that is required.</p> <p>6       Q    You did that for both parcels?</p> <p>7       A    Correct.</p> <p>8       Q    Okay. So I want to take you --</p> <p>9       by now, there are lawyers involved in this?</p> <p>10      A    Yes.</p> <p>11      Q    There are lawyers writing</p> <p>12      letters back and forth?</p> <p>13      A    Yes.</p> <p>14      Q    That's what we see in</p> <p>15      Exhibit 93.</p> <p>16           (Previously Marked Exhibit No.</p> <p>17      93, 9/24/13 Letter from Flagg to</p> <p>18      Lembo, Document is introduced into the</p> <p>19      proceedings.)</p> <p>20      Q    You have a letter here from</p> <p>21      Clinton Flagg to Mr. Lembo?</p> <p>22      A    Yes.</p> <p>23      Q    And then in '94 we have got</p> <p>24      Greenblatt Lesser writing back. The</p> <p>25      lawyers are fighting it?</p>	<p style="text-align: right;">1039</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       And they agreed to allow us to</p> <p>3       have somebody down there. And Steve was</p> <p>4       the guy retained to do that.</p> <p>5       Q    And was Steve sending you</p> <p>6       reports from down there?</p> <p>7       A    From what I recall, yeah, I</p> <p>8       don't remember the frequency of them,</p> <p>9       whether they were daily or weekly; but,</p> <p>10      yes, he was.</p> <p>11      Q    And just in general what was</p> <p>12      Steve telling you?</p> <p>13      A    Generally, what was going on.</p> <p>14      At this point, John Anderson had come in as</p> <p>15      Federico's replacement, you know --</p> <p>16      Q    Sorry. Come in where?</p> <p>17      A    John -- Ugo Colombo had hired</p> <p>18      by now John Anderson as the new president</p> <p>19      of the company.</p> <p>20      Q    Of Glasswall?</p> <p>21      A    Of Glasswall.</p> <p>22      Q    Go ahead.</p> <p>23      A    So John was responsible for</p> <p>24      getting this order filled. And there was</p> <p>25      some progress being made, but it was in</p>
<p style="text-align: right;">1038</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       (Previously Marked Exhibit No.</p> <p>3       94, 10/2/13 Letter from Greenblatt to</p> <p>4       Flagg, Document is introduced into the</p> <p>5       proceedings.)</p> <p>6       A    That's a good way to describe</p> <p>7       it, I guess.</p> <p>8       Q    All right. Now, at this</p> <p>9       point -- do you know who a guy named Steve</p> <p>10      Barber is?</p> <p>11      A    Yes.</p> <p>12      Q    All right. Tell me who he is</p> <p>13      and when he came on the scene.</p> <p>14      A    I don't remember specifically</p> <p>15      dates. But around the time that it seemed</p> <p>16      that window was assembly was going to begin</p> <p>17      in the factory, we asked Glasswall if we</p> <p>18      could have a representative down there at</p> <p>19      the factory just to monitor progress, not</p> <p>20      necessarily monitor quality control as</p> <p>21      there were others doing that, but keep an</p> <p>22      eye on that as well, but really mainly just</p> <p>23      to monitor that things were moving forward</p> <p>24      in an orderly fashion that was going to get</p> <p>25      us windows on the site.</p>	<p style="text-align: right;">1040</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       fits and starts. I don't know how else to</p> <p>3       categorize it.</p> <p>4       It was still a little bit in</p> <p>5       disarray, although there was some progress</p> <p>6       being made.</p> <p>7       Q    And was Steve Barber telling</p> <p>8       you -- what was he telling you? Was he</p> <p>9       satisfied, dissatisfied?</p> <p>10      A    In general, Steve is saying,</p> <p>11      you know, they have got a couple of lines</p> <p>12      working, but not all of the material they</p> <p>13      need to continue working is here. Some of</p> <p>14      it is not being assembled correctly.</p> <p>15           Again, there continued to be a</p> <p>16      trend of people leaving the engineering</p> <p>17      department, of people -- I think at some</p> <p>18      point the floor manager quit. You know,</p> <p>19      there were -- there were lots of</p> <p>20      indications that, you know, things were</p> <p>21      moving, but not necessarily in a straight</p> <p>22      line.</p> <p>23      Q    Okay. And who is IBA on this</p> <p>24      project?</p> <p>25      A    They are Israel Berger</p>

<p style="text-align: right;">1045</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 A Okay.</p> <p>3 Q Do you have any windows yet?</p> <p>4 A No.</p> <p>5 Q And lawyers are still fighting.</p> <p>6 So Exhibit 101, Greenblatt Lesser is</p> <p>7 writing a letter to Flag; is that what you</p> <p>8 see here?</p> <p>9 (Previously Marked Exhibit No.</p> <p>10 101, Greenblatt Lesser letter to</p> <p>11 Flag, Document is introduced into the</p> <p>12 proceedings.)</p> <p>13 A Correct.</p> <p>14 Q He's representing you?</p> <p>15 A Judah Greenblatt, yes.</p> <p>16 MR. RENDA: Which exhibit?</p> <p>17 MR. KLEINHENDLER: 101.</p> <p>18 (Mr. Colapinto arrived at the</p> <p>19 arbitration.)</p> <p>20 Q So I want to take you to</p> <p>21 Exhibit 109. And this is an E-Mail</p> <p>22 thread -- start on the back page, which is</p> <p>23 MC 10023. John Anderson is writing to you</p> <p>24 on November 14th -- on November 14, 2013.</p> <p>25 Take a look at that. We have</p>	<p style="text-align: right;">1047</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 A So at the time from what I</p> <p>3 remember, John had some quantity of windows</p> <p>4 that he was purporting were ready for</p> <p>5 shipment. But there was still a number of</p> <p>6 open issues. There was still quality</p> <p>7 control issues that had not been addressed</p> <p>8 interest.</p> <p>9 There was still an issue in my</p> <p>10 mind of what is really our ongoing schedule</p> <p>11 here, about all the material that they</p> <p>12 needed to continue assembly was in their</p> <p>13 shop.</p> <p>14 There was some concern:</p> <p>15 "Okay. We are going to take a</p> <p>16 couple of trucks of windows, mobilize all</p> <p>17 the iron workers. And then what happens?</p> <p>18 You know, are they going to really have</p> <p>19 material to continue working?"</p> <p>20 There were a number of</p> <p>21 different issues, somewhat of that going</p> <p>22 on, that was making us a little nervous</p> <p>23 about just saying:</p> <p>24 "Okay. You have a few windows.</p> <p>25 Send them to us."</p>
<p style="text-align: right;">1046</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 seen it a couple of times already, but I</p> <p>3 want to you to read it. Okay.</p> <p>4 (Previously Marked Exhibit No.</p> <p>5 109, E-Mail thread, with Bates No.</p> <p>6 MC 10023, from John Anderson to Greg</p> <p>7 Bauso on November 14th, 2013, Document</p> <p>8 is introduced into the proceedings.)</p> <p>9 Q Just follow through on the</p> <p>10 thread.</p> <p>11 A Okay. What is your question?</p> <p>12 Q I want you to go through on the</p> <p>13 thread here.</p> <p>14 A Okay.</p> <p>15 Q And then I'm going to ask you</p> <p>16 question. Tell me when you are finished</p> <p>17 reading it.</p> <p>18 A Okay.</p> <p>19 Q All right. So there is a back</p> <p>20 and forth here about should you take</p> <p>21 windows or not windows. So I want you</p> <p>22 to -- other than what it says here --</p> <p>23 because we have seen it -- can you add some</p> <p>24 color or background to the give and take</p> <p>25 that this E-Mail string represents?</p>	<p style="text-align: right;">1048</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 You know.</p> <p>3 Q And other than the E-Mail</p> <p>4 exchange, were there any telephone</p> <p>5 conversations between you and John on this</p> <p>6 issue?</p> <p>7 A Oh, just about daily, sure.</p> <p>8 Q All right. So other than what</p> <p>9 is in here, can you add anything with those</p> <p>10 conversations, or was it just more of the</p> <p>11 same?</p> <p>12 A It was -- yeah, it was really</p> <p>13 what I just said:</p> <p>14 "How much do you have? What is</p> <p>15 the plan to continue? When are you going</p> <p>16 to have the next shipment available? What</p> <p>17 are we doing about all of these open issues</p> <p>18 on the IBA reports that have been talked</p> <p>19 about?"</p> <p>20 How do I know what is in these</p> <p>21 crates, really, was what my concerns and</p> <p>22 conversations were.</p> <p>23 Q And what was his answers to</p> <p>24 those questions?</p> <p>25 A "We are working on it. We are</p>



<p style="text-align: right;">1049</p> <p>1 Monadnock v. Glasswall - Volume IV  2 working on it. We are working on it."  3 But there was no -- it was  4 really very little firm progress being  5 made.  6 CHAIRMAN ROSSI: Are you moving  7 off of this document?  8 MR. KLEINHENDLER: Yes.  9 CHAIRMAN ROSSI: I have a  10 question on this document.  11 MR. KLEINHENDLER: Go ahead.  12 CHAIRMAN ROSSI: You wrote to  13 Mr. -- Mr. Anderson at 2 o'clock on  14 November 14th. Do you see at the  15 bottom of that, on the first page,  16 22 --  17 THE WITNESS: 2:13?  18 CHAIRMAN ROSSI: Yeah, you  19 see -- and you say:  20 "As well" -- "as" -- "As well,  21 please stop pretending that I did not  22 tell you personally on phone  23 conversation last night that we will  24 accept no windows until the agreement  25 is signed."</p>	<p style="text-align: right;">1051</p> <p>1 Monadnock v. Glasswall - Volume IV  2 if you only have one window, what --  3 what's the sense? Right.  4 But if he's got -- I think  5 there was something. I'm not sure.  6 I'd have -- I'd have to go back, but  7 there were several hundred, maybe a  8 thousand windows ready -- ready to go  9 at that point.  10 Yeah, just -- just tell me.  11 THE WITNESS: So I know -- I  12 think at that point there were less  13 than that.  14 CHAIRMAN ROSSI: Okay.  15 THE WITNESS: I think by the  16 end -- by the end of November, there  17 were a pretty good amount of windows.  18 CHAIRMAN ROSSI: Okay.  19 THE WITNESS: And there were  20 different issues at that point.  21 CHAIRMAN ROSSI: Okay.  22 THE WITNESS: But by that  23 point, there really weren't that many  24 windows made. We were a little  25 concerned about the quality.</p>
<p style="text-align: right;">1050</p> <p>1 Monadnock v. Glasswall - Volume IV  2 What agreement are you talking  3 about?  4 THE WITNESS: I think at the  5 time, from what I remember, there had  6 been a meeting and some conversations  7 between Ugo Colombo and some people at  8 Related where there was some type of  9 agreement that they had told me was  10 going to be put in place regarding the  11 completion of the job.  12 I was not a party to those  13 conversations. And, ultimately, it  14 just never materialized into anything.  15 But at the time it was one of  16 the things that I was expecting to get  17 from Glasswall.  18 CHAIRMAN ROSSI: Okay. But  19 what do you -- what -- what -- what  20 were you -- what were you  21 accomplishing at that point by saying:  22 "We don't want -- we don't want  23 the windows that you have down there"?  24 I mean, it just seems to me,  25 you know, if it were me, I mean, yeah,</p>	<p style="text-align: right;">1052</p> <p>1 Monadnock v. Glasswall - Volume IV  2 Like I said, we were kind of  3 mitigating our damages from other  4 trades, mobilizing iron workers and  5 then having to tell them to stop.  6 And to be completely honest,  7 there was still in the back of our  8 minds:  9 "Where is this going? Are they  10 really going to be able to complete  11 this thing?"  12 CHAIRMAN ROSSI: I mean, if you  13 have to get somebody else to do it.  14 THE WITNESS: That became a  15 thought that we had starting in August  16 and September.  17 CHAIRMAN ROSSI: Okay.  18 THE WITNESS: You know, really,  19 are these guys really going to be able  20 to finish this?  21 CHAIRMAN ROSSI: Right, and  22 then -- and then -- if -- if -- if I'm  23 imagining -- I'm -- I'm not sure --  24 but I am managing that, if you have a  25 thousand windows made by Glasswall,</p>



<p style="text-align: right;">1053</p> <p>1       Monadnock v. Glasswall - Volume IV 2       now, you have got the rest by somebody 3       else -- 4       THE WITNESS: If there were -- 5       we would have to -- if we started 6       installing two or three floors of 7       windows, and their factory was not 8       able to complete this, we -- you would 9       not be able to find another factory 10       that could manufacture that exact 11       window. 12       So, essentially, you'd have to 13       tear out and start all over again 14       whatever you installed. 15       CONTINUED EXAMINATION 16       BY MR. KLEINHENDLER: 17       Q   Why, because you needed 18       matching? 19       A   There's just a number of 20       reasons why it just wouldn't work. You 21       couldn't have somebody else come in and 22       fabricate that same window. 23       All factories are going to 24       assemble things differently, and paint 25       colors. There is just a long, long list of</p>	<p style="text-align: right;">1055</p> <p>1       Monadnock v. Glasswall - Volume IV 2       and it just never happened. 3       CHAIRMAN ROSSI: All right. 4       Why don't we take a little break now. 5       (There was a discussion off the 6       record.) 7       (A break is taken.) 8       CHAIRMAN ROSSI: All right. 9       You are still under oath, Mr. Bauso. 10       All right. 11       CONTINUED EXAMINATION 12       BY MR. KLEINHENDLER: 13       Q   I would like to show you 14       Exhibit 117 and 118 there. 15       (Previously Marked Exhibit No. 16       117, Payment Application Document is 17       introduced into the proceedings.) 18       (Previously Marked Exhibit No. 19       118, Payment Application Document is 20       introduced into the proceedings.) 21       Q   Payment application number ten 22       from Glasswall, one for each building. 23       Do you see those? 24       A   Yes. 25       Q   And can you just describe to</p>
<p style="text-align: right;">1054</p> <p>1       Monadnock v. Glasswall - Volume IV 2       reasons why that wouldn't work. 3       CHAIRMAN ROSSI: Okay. 4       MR. RENDA: I have a question: 5       When you say, in the 6       screen, "We will accept no windows 7       until the agreement is signed," I am 8       still not clear what kind of agreement 9       were you looking to have signed. 10       THE WITNESS: There is -- I was 11       being told at one point that Glasswall 12       was going to issue some type of 13       amended agreement that was going to 14       lay out the completion and the terms 15       under which this thing would be 16       completed, the project with dates, and 17       with consequences if they didn't hit 18       those dates. 19       MR. RENDA: So you were looking 20       for something firm from them -- 21       THE WITNESS: Yes. 22       MR. RENDA: -- as to delivery 23       and what would happen if they didn't 24       deliver? 25       THE WITNESS: Correct, correct,</p>	<p style="text-align: right;">1056</p> <p>1       Monadnock v. Glasswall - Volume IV 2       the panel what they are. 3       A   It's a monthly payment 4       requisition from Glasswall with an itemized 5       payment breakdown. 6       Q   Does it say how much was paid 7       to date for these guys for each month? 8       A   It says how much is 9       previously -- previous certificates of 10       payment. 11       Q   So from parcel A, as of 11 -- 12       as of November, how much was paid to 13       Glasswall? 14       CHAIRMAN ROSSI: He's not 15       saying they were paid -- is the way 16       these things work, as you know, is 17       that you come in; you have a 18       certificate of payment; and you say 19       what was billed in the past -- isn't 20       that right -- not necessarily paid. 21       So that's going to be my 22       next -- I guess your next question 23       afterwards -- were these numbers, the 24       previous certificates, actually paid? 25       THE WITNESS: From my</p>

<p style="text-align: right;">1073</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2             And this letter was simply sent</p> <p>3       out as a:</p> <p>4             "All right. Here we are. It's</p> <p>5       December 31st. We still don't have</p> <p>6       windows. You are still in default."</p> <p>7       CONTINUED EXAMINATION</p> <p>8       BY MR. KLEINHENDLER:</p> <p>9       Q    Do you recall a meeting on</p> <p>10      December 6th or 7th in Miami?</p> <p>11       CHAIRMAN ROSSI: But at this</p> <p>12      time, when you wrote this letter,</p> <p>13      Exhibit 133, you wanted the windows?</p> <p>14       THE WITNESS: From what I</p> <p>15      recall -- and, again, I think it was</p> <p>16      clear they weren't going to be</p> <p>17      shipped -- but there were enough</p> <p>18      windows and enough progress had been</p> <p>19      made that I believe we probably would</p> <p>20      have accepted deliveries at that</p> <p>21      point.</p> <p>22       CHAIRMAN ROSSI: All right.</p> <p>23      Okay. Thank you.</p> <p>24      CONTINUED EXAMINATION</p> <p>25      BY MR. KLEINHENDLER:</p>	<p style="text-align: right;">1075</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       number is that?</p> <p>3       MR. KLEINHENDLER: 141. 141.</p> <p>4       Q    Now, at this point, in January,</p> <p>5      2014, they are now terminated, right?</p> <p>6       A    As of the date of this letter,</p> <p>7      yes.</p> <p>8       MR. KLEINHENDLER: Can you put</p> <p>9      the picture back up.</p> <p>10      MS. FODOR: They are not?</p> <p>11      MR. KLEINHENDLER: They are</p> <p>12      now --</p> <p>13      MS. FODOR: Now terminated?</p> <p>14      THE WITNESS: Yeah, as of the</p> <p>15      date of that letter. Yes.</p> <p>16      Q    Okay. And let's just -- you</p> <p>17      know, we have got this picture up. This is</p> <p>18      a picture of the buildings as of early</p> <p>19      January.</p> <p>20       Do you see that?</p> <p>21       Do you -- do you recognize that</p> <p>22      that was the -- that was the status of the</p> <p>23      project at that time?</p> <p>24      A    I remember it vividly.</p> <p>25      Q    So explain now to this panel.</p>
<p style="text-align: right;">1074</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       Q    But they said no deliveries</p> <p>3      until payment, correct?</p> <p>4       A    Correct.</p> <p>5       Q    Okay. Let's go to 141.</p> <p>6       (Previously Marked Exhibit No.</p> <p>7      141, 1/13/14 Notice of Termination</p> <p>8      from Mr. Bauso to Mr. Colombo,</p> <p>9      Document is introduced into the</p> <p>10     proceedings.)</p> <p>11      Q    And just 135. There was the</p> <p>12      same letter for the other parcel, one</p> <p>13      letter for each one?</p> <p>14      A    Correct.</p> <p>15      Q    And then?</p> <p>16      (Previously Marked Exhibit No.</p> <p>17      135, 12/31/13 Notice of Continuing</p> <p>18      Default, Document is introduced into</p> <p>19      the proceedings.)</p> <p>20      Q    141 is a termination. Why</p> <p>21      don't you just take a look at that?</p> <p>22       You signed it. Do you agree</p> <p>23      with what you put in there.</p> <p>24      A    Yes, I remember that.</p> <p>25       CHAIRMAN ROSSI: What -- what</p>	<p style="text-align: right;">1076</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       You have got these completed</p> <p>3      superstructures and no windows. So what</p> <p>4      were you going to do?</p> <p>5       What did you do then?</p> <p>6       Now that you've defaulted, what</p> <p>7      are you going to do?</p> <p>8       Or what did you discuss doing</p> <p>9      with the owner, with Glasswall, with</p> <p>10     anybody else?</p> <p>11      A    Well, just one step back, the</p> <p>12      last step before this termination letter</p> <p>13      was issued, I asked John and decided to</p> <p>14      call a meeting where he came to New York</p> <p>15      with his attorney.</p> <p>16       And the four of us, myself with</p> <p>17      Judah, sat in a room for three days and</p> <p>18      tried to come to an agreement on terms</p> <p>19      under which -- tried basically to find a</p> <p>20      middle ground between their demand for</p> <p>21      payment prior to shipping windows, come up</p> <p>22      with a payment schedule acceptable to both</p> <p>23      parties, come up with a</p> <p>24      schedule-to-complete acceptable to both</p> <p>25      parties, come up with a means for</p>

<p style="text-align: right;">1077</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       addressing quality control issues and a way</p> <p>3       for us to hold back some money, at least,</p> <p>4       until they were addressed in the field.</p> <p>5       If we accepted windows that</p> <p>6       still had quality control issues, I was</p> <p>7       trying to say we will accept windows, but</p> <p>8       you have got to let us hold back a little</p> <p>9       bit of money until they're resolved, the QC</p> <p>10       issues.</p> <p>11       We spent three days in a room.</p> <p>12       And in the end, my feeling was there was</p> <p>13       just little to no effort on Glasswall's</p> <p>14       part to meet me halfway. And at the end of</p> <p>15       that, I just -- it just seemed there was no</p> <p>16       other solution other than terminating.</p> <p>17       And our hope was terminating</p> <p>18       would result in either the bonding company</p> <p>19       coming in and taking over Glasswall's</p> <p>20       operations and completing this job, or the</p> <p>21       bonding company allowing us to -- and</p> <p>22       funding us in hiring another company to</p> <p>23       build the job, build the curtain wall.</p> <p>24       Q    Okay. So you sent a copy of</p> <p>25       the termination to the bonding company?</p>	<p style="text-align: right;">1079</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       discussions with the -- the bonding</p> <p>3       company.</p> <p>4       What happened next?</p> <p>5       A    Sorry.</p> <p>6       Q    What happened next?</p> <p>7       A    So from what I recall, the</p> <p>8       bonding company's response was:</p> <p>9       "Look, there's some windows</p> <p>10       made down there. We don't feel that</p> <p>11       bringing in another company is the right</p> <p>12       course of action here."</p> <p>13       And that -- that began the</p> <p>14       period of time where they took a role in</p> <p>15       formulating what eventually became this</p> <p>16       three-party agreement that was signed</p> <p>17       several months later that at that point</p> <p>18       began the delivery of windows to the site.</p> <p>19       Q    All right. And that's --</p> <p>20       CHAIRMAN ROSSI: Are you</p> <p>21       talking about the amendment in March,</p> <p>22       right then?</p> <p>23       THE WITNESS: I think the -- I</p> <p>24       forget what the document is called,</p> <p>25       but it was March or April, late March,</p>
<p style="text-align: right;">1078</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       A    Yes.</p> <p>3       (Previously Marked Exhibit No.</p> <p>4       142, Complaint, Westchester Fire</p> <p>5       versus Glasswall, Document is</p> <p>6       introduced into the proceedings.)</p> <p>7       Q    And, in fact, if you look at</p> <p>8       Exhibit 142, it didn't take long, and the</p> <p>9       bonding company filed a lawsuit, didn't</p> <p>10       they, in New York against Glasswall and</p> <p>11       Sara Jayne Kennedy Colombo?</p> <p>12       (There was a discussion off the</p> <p>13       record.)</p> <p>14       A    I see it. I am not familiar</p> <p>15       with the details of that document. But I</p> <p>16       see it.</p> <p>17       MS. FODOR: What number is</p> <p>18       that? Excuse me.</p> <p>19       MR. KLEINHENDLER: That's 142.</p> <p>20       Q    So tell me. So what happened</p> <p>21       next?</p> <p>22       Again, you have got the</p> <p>23       skeleton. You have got these completed</p> <p>24       infrastructures. You have got a defaulted</p> <p>25       window contractor. You have got</p>	<p style="text-align: right;">1080</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       maybe.</p> <p>3       CHAIRMAN ROSSI: Is that -- is</p> <p>4       that true, Mr. Kleinhendler? Is that</p> <p>5       true? That's what you are talking</p> <p>6       about, right?</p> <p>7       MR. KLEINHENDLER: Yes, we are</p> <p>8       going to get to that. Yes.</p> <p>9       CONTINUED EXAMINATION</p> <p>10       BY MR. KLEINHENDLER:</p> <p>11       Q    Just -- let's just go through</p> <p>12       some of these documents.</p> <p>13       143 is another letter from you</p> <p>14       to the bond company asking them basically</p> <p>15       what's going on.</p> <p>16       (Previously Marked Exhibit No.</p> <p>17       143, Letter from Monadnock to</p> <p>18       Westchester Fire, Document is</p> <p>19       introduced into the proceedings.)</p> <p>20       A    Correct.</p> <p>21       Q    Let's go to -- 146 is what the</p> <p>22       arbitrator was asking you. The amendment</p> <p>23       agreement, do you recall signing this</p> <p>24       agreement?</p> <p>25       A    Yes.</p>

<p style="text-align: right;">1081</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2           (There was a discussion off the</p> <p>3       record.)</p> <p>4       Q   Do you recall signing this</p> <p>5       agreement?</p> <p>6       A   Yes.</p> <p>7           CHAIRMAN ROSSI: 146.</p> <p>8           (Previously Marked Exhibit No.</p> <p>9       146, Amendment Agreement, Document is</p> <p>10       introduced into the proceedings.)</p> <p>11       Q   And was the -- when you signed</p> <p>12       this agreement, did you understand that you</p> <p>13       were giving up the -- were you in your mind</p> <p>14       giving up any rights that you had against</p> <p>15       Glasswall to date?</p> <p>16       A   No, not at all. The -- the</p> <p>17       intention of the agreement was to say:</p> <p>18           "Okay. Bonding company, owner,</p> <p>19       Glasswall, Monadnock, are agreeing on the</p> <p>20       terms under which they will finish this job</p> <p>21       and deliver the windows. And we are going</p> <p>22       to basically defer our grievances with each</p> <p>23       other until after that is done."</p> <p>24           That was my understanding of</p> <p>25       the purpose of the agreement, as well as,</p>	<p style="text-align: right;">1083</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       days or as much as a week or more.</p> <p>3           There were some points where</p> <p>4       the iron workers became very close to</p> <p>5       running out of work, and maybe a day or two</p> <p>6       where they had no work. But for the most</p> <p>7       part, the shipments continued.</p> <p>8       Q   Okay. Let's take a look at</p> <p>9       Exhibit 151.</p> <p>10           (Previously Marked Exhibit No.</p> <p>11       151, 10/28/14 Letter from Mr. Bauso to</p> <p>12       Mr. Anderson, Document is introduced</p> <p>13       into the proceedings.)</p> <p>14       Q   Which is an October letter from</p> <p>15       you to John Anderson.</p> <p>16           CHAIRMAN ROSSI: What number?</p> <p>17           MR. KLEINHENDLER: 151.</p> <p>18       Q   Do you recall whether, towards</p> <p>19       the end of October, there became an issue</p> <p>20       as to payments with -- between you and</p> <p>21       Glasswall?</p> <p>22       A   Yes. Yes. John Anderson at</p> <p>23       the time notified me that they were not</p> <p>24       going to complete. I believe there were</p> <p>25       like a few floors remaining in the hoist</p>
<p style="text-align: right;">1082</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       you know, setting out the payment terms</p> <p>3       under which that would happen.</p> <p>4       Q   Now, after you signed this</p> <p>5       agreement, how did the shipments of windows</p> <p>6       progress?</p> <p>7       A   Well, the first thing that</p> <p>8       happened was, the day after it was signed,</p> <p>9       I got a call from John Anderson saying:</p> <p>10           "I need to tell you that</p> <p>11       several hundred of the windows were</p> <p>12       fabricated incorrectly with the hinges on</p> <p>13       the wrong side. What should we do?"</p> <p>14           Which -- we began to work on</p> <p>15       how to resolve that issue.</p> <p>16           But I believe -- I don't</p> <p>17       remember exactly, but I believe, within a</p> <p>18       week to two weeks of the agreement being</p> <p>19       signed, shipments began to happen to the</p> <p>20       job site.</p> <p>21       Q   And were shipments continuous,</p> <p>22       or were there problems with it?</p> <p>23       A   You know, for the most part,</p> <p>24       there were obviously some stumbles and</p> <p>25       dates missed along the way, missed by a few</p>	<p style="text-align: right;">1084</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       run to be shipped, and he basically started</p> <p>3       telling me that they were not going to make</p> <p>4       those deliveries until they received -- or,</p> <p>5       rather, the bonding company received</p> <p>6       payment in full for the balance of the</p> <p>7       project.</p> <p>8           And he was asking for it in a</p> <p>9       way that seemed to not be in accordance</p> <p>10       with the agreement that had been signed</p> <p>11       back in March or April.</p> <p>12       Q   And that's why you wrote him</p> <p>13       this letter?</p> <p>14       A   We conferred, and we decided</p> <p>15       that sending the money -- yeah, this was</p> <p>16       saying that, you know -- I asked him point</p> <p>17       blank if we sent the money directly</p> <p>18       there -- because he -- he made a point of</p> <p>19       stating to me on several occasions, that if</p> <p>20       accordance -- in accordance with the</p> <p>21       agreement, we deposited the money in the</p> <p>22       Duane Morris escrow account, he in no</p> <p>23       uncertain terms told me that they would not</p> <p>24       ship the windows to us.</p> <p>25           We discussed this, and we</p>

<p style="text-align: right;">1089</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       A     Correct.</p> <p>3       (Previously Marked Exhibit No.</p> <p>4       180, Formal Termination, Document is</p> <p>5       introduced into the proceedings.)</p> <p>6       Q     You did it for both parcels?</p> <p>7       (There was a discussion off the</p> <p>8       record.)</p> <p>9       Q     And you did it for both</p> <p>10      parcels?</p> <p>11      A     Correct.</p> <p>12      Q     So what happened subsequent to</p> <p>13      this termination? What work did you do on</p> <p>14      the project in connection with the curtain</p> <p>15      wall?</p> <p>16      A     Subsequent to the termination,</p> <p>17      I mean, Paul and his staff basically went</p> <p>18      through a process of getting all of the</p> <p>19      remaining items dealt with through other</p> <p>20      vendors.</p> <p>21      Q     Okay. I want you to take a</p> <p>22      look at Exhibit 167.</p> <p>23      (Previously Marked Exhibit No.</p> <p>24      167, E-Mail Chain, between Judah</p> <p>25      Greenblatt and Robert Boote,</p>	<p style="text-align: right;">1091</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       ultimately completed by them.</p> <p>3       Q     It says here:</p> <p>4       "MC" -- Monadnock -- "will not</p> <p>5       meet with Glasswall to discuss the</p> <p>6       completion of the work unless it is within</p> <p>7       the context of the WFIT takeover</p> <p>8       agreement."</p> <p>9       Do you know what they are</p> <p>10      taking about here?</p> <p>11      A     I think the lawyer was trying</p> <p>12      to say that:</p> <p>13      "We are not having -- Glasswall</p> <p>14      has been terminated. We are not having any</p> <p>15      direct conversations with them regarding</p> <p>16      the completion of these items. If</p> <p>17      Westchester wants to basically take over</p> <p>18      these responsibilities and on their behalf</p> <p>19      have Glasswall complete them, then that's</p> <p>20      fine."</p> <p>21      We are basically saying we will</p> <p>22      communicate with the bonding company</p> <p>23      regarding that, but not directly with</p> <p>24      Glasswall.</p> <p>25      Q     And did Glasswall ever -- did</p>
<p style="text-align: right;">1090</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       March 23rd, 2015, Document is</p> <p>3       introduced into the proceedings.)</p> <p>4       Q     And this is an E-Mail between</p> <p>5       Judah Greenblatt and Robert Boote,</p> <p>6       March 23rd.</p> <p>7       When you terminated Glasswall</p> <p>8       in 2015, again, did you turn to the bonds</p> <p>9       to step in and perform?</p> <p>10      A     Yes, we sent notification to</p> <p>11      them.</p> <p>12      Q     Did they agree to that?</p> <p>13      A     From what I recall and from</p> <p>14      reading this, I think they made statements</p> <p>15      to the effect that:</p> <p>16      "Yes, we think Glasswall can</p> <p>17      complete these items."</p> <p>18      But nothing ever became of</p> <p>19      that.</p> <p>20      Q     Did Glasswall ever send people</p> <p>21      down to complete the work that you had</p> <p>22      identified in your March 4th letter of</p> <p>23      2015?</p> <p>24      A     Not that I recall. I don't</p> <p>25      believe any of the items on that list were</p>	<p style="text-align: right;">1092</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       the bonding company ever ask Glasswall to</p> <p>3       do the work to your knowledge?</p> <p>4       A     They may have asked, but it</p> <p>5       didn't happen.</p> <p>6       Q     Let's take a look at 189. I</p> <p>7       want to back it up a little here. Sorry,</p> <p>8       182.</p> <p>9       (Previously Marked Exhibit No.</p> <p>10      189, Document is introduced into the</p> <p>11      proceedings.)</p> <p>12      (Previously Marked Exhibit No.</p> <p>13      182, Temporary Certificate of</p> <p>14      Occupancy for building B, floors 1</p> <p>15      through 21, with the exception of the</p> <p>16      retail, Document is introduced into</p> <p>17      the proceedings.)</p> <p>18      Q     This is a -- can you just</p> <p>19      describe what this is, 182?</p> <p>20      A     This is a temporary certificate</p> <p>21      of occupancy for building B, floors 1</p> <p>22      through 21, with the exception of the</p> <p>23      retail.</p> <p>24      Q     183, 183?</p> <p>25      (Previously Marked Exhibit No.</p>



<p style="text-align: right;">1133</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       written, or any form. He communicated this</p> <p>3       after the termination.</p> <p>4       Q    This came one day after the</p> <p>5       termination?</p> <p>6       A    Correct.</p> <p>7       Q    And because it came one day</p> <p>8       after the termination, you didn't want him</p> <p>9       to come back?</p> <p>10      A    At that point, it's up to the</p> <p>11      bonding company to get him back. The</p> <p>12      contract, the agreement was terminated; and</p> <p>13      it was up to the bonding company to get him</p> <p>14      back.</p> <p>15      Q    Didn't the bonding company --</p> <p>16      didn't the bond being company attorney,</p> <p>17      Mr. Boote, tell you that they were ready,</p> <p>18      willing, and able to send Glasswall back?</p> <p>19      A    Yes, he did.</p> <p>20      Q    And you said no?</p> <p>21      A    I don't recall saying no, but I</p> <p>22      don't recall it happening. Do you have</p> <p>23      something --</p> <p>24      Q    Take a look at the last</p> <p>25      document in Exhibit D in my book.</p>	<p style="text-align: right;">1135</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       with each other. I was under the</p> <p>3       impression that I was not to communicate</p> <p>4       directly with him about these matters, that</p> <p>5       it was now up to the attorneys to</p> <p>6       communicate what would happen next.</p> <p>7       Q    Hadn't you previously sent</p> <p>8       termination notices to Glasswall?</p> <p>9       A    And ceased all communications</p> <p>10      directly with them on those previous</p> <p>11      termination notices as well.</p> <p>12      Q    Isn't it true that you didn't</p> <p>13      want Glasswall to come back?</p> <p>14      A    Absolutely not.</p> <p>15      Q    Why didn't you just accept the</p> <p>16      offer then?</p> <p>17      A    Because we had waited for</p> <p>18      several months. Glasswall in my opinion</p> <p>19      ceased to exist as a company. It was John</p> <p>20      Anderson and one or two people. They</p> <p>21      verbally basically told me they had no</p> <p>22      intention of finishing this.</p> <p>23             We sent them multiple letters.</p> <p>24      We sent them a default notice. They did</p> <p>25      not respond. They -- this E-Mail was</p>
<p style="text-align: right;">1134</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       (Previously Marked Exhibit No.</p> <p>3       D, March 18 E-Mail, Document is</p> <p>4       introduced into the proceedings.)</p> <p>5       Q    The last page of D.</p> <p>6       (There was a discussion off the</p> <p>7       record.)</p> <p>8       MR. KLEINHENDLER: March 18th</p> <p>9       E-Mail?</p> <p>10      MR. CINQUE: Yes.</p> <p>11      Q    So on the bottom one there,</p> <p>12      John Anderson sends you his letter on</p> <p>13      March 17th at 5:58. On March 18th at 9:50</p> <p>14      in the morning, you say:</p> <p>15             "John, the contracts have been</p> <p>16      terminated, and this is now a legal matter</p> <p>17      that will be handled by attorneys."</p> <p>18      A    Correct.</p> <p>19      Q    So is it your position that</p> <p>20      because he was one day late in sending the</p> <p>21      letter you didn't want anything to do with</p> <p>22      him?</p> <p>23      A    My position is that, once the</p> <p>24      termination notice is sent, it then becomes</p> <p>25      a matter of the attorneys communicating</p>	<p style="text-align: right;">1136</p> <p>1       Monadnock v. Glasswall - Volume IV</p> <p>2       received, my first communication from him,</p> <p>3       only after the termination letter went out.</p> <p>4       And I was advised by counsel at</p> <p>5       that point:</p> <p>6             "It's out of your hands now.</p> <p>7       Just let the attorneys settle if. If the</p> <p>8       bonding company wants to come back in, then</p> <p>9       they will."</p> <p>10      And they did not.</p> <p>11      Q    And weren't you told --</p> <p>12      withdrawn.</p> <p>13      A    Let's look at the third</p> <p>14      paragraph of that letter. I'm back now to</p> <p>15      Mr. Anderson's letter to Mr. Bauso,</p> <p>16      March 17th.</p> <p>17      MR. KLEINHENDLER: We are</p> <p>18      back --</p> <p>19      MR. CINQUE: We are back to --</p> <p>20      MR. KLEINHENDLER: The book.</p> <p>21      MR. CINQUE: I forget what</p> <p>22      exhibit it is.</p> <p>23             (There was a discussion off the</p> <p>24      record.)</p> <p>25      MR. KLEINHENDLER: Exhibit 164.</p>



<p style="text-align: right;">1165</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 A Which we already discussed,</p> <p>3 yes.</p> <p>4 Q Seven, LEED documentation, said</p> <p>5 it would be delivered with warranties.</p> <p>6 Eight, in-fill panels:</p> <p>7 "Need schedule of panels,</p> <p>8 dimensions, and measurements."</p> <p>9 Wouldn't they need that</p> <p>10 information?</p> <p>11 A I am 99 plus percent sure that</p> <p>12 our staff, prior to the default notice,</p> <p>13 conveyed that information on the</p> <p>14 specifications.</p> <p>15 Q Number nine, the picture frame</p> <p>16 metal, he says:</p> <p>17 "Material was shipped and</p> <p>18 received at the job site."</p> <p>19 Do you know if it was?</p> <p>20 A I don't believe -- if it was on</p> <p>21 the list, I am 99 percent certain it was</p> <p>22 not.</p> <p>23 Q Number ten on the leuco band,</p> <p>24 he says he needs a list of the panels.</p> <p>25 Wouldn't they need the list?</p>	<p style="text-align: right;">1167</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 that point that it's out of my hands.</p> <p>3 Q Weren't you advised that you</p> <p>4 needed to terminate your contract with</p> <p>5 Glasswall in order to bring a claim against</p> <p>6 the bonding company?</p> <p>7 A There was some discussions</p> <p>8 about that, but, honestly, I don't</p> <p>9 remember -- and I am not sure I understood</p> <p>10 whether that was even true or -- and all I</p> <p>11 know is -- you know, this list of items</p> <p>12 that we needed to get done is the reason I</p> <p>13 wanted the letter sent.</p> <p>14 Q Didn't your lawyers send you</p> <p>15 legal statements like monthly bills?</p> <p>16 A Yes.</p> <p>17 Q I'm going to show you a bill</p> <p>18 from February 3, 2014. Mark it as S --</p> <p>19 this is S, I believe.</p> <p>20 MR. KLEINHENDLER: Some of the</p> <p>21 soft costs are legal fees. That is</p> <p>22 why we had to produce these records.</p> <p>23 MR. CINQUE: It's S.</p> <p>24 (Previously Marked Exhibit No.</p> <p>25 S, Legal Bills, Document is introduced</p>
<p style="text-align: right;">1166</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 A Yes, and I am sure they got it.</p> <p>3 Q But sitting here today, do you</p> <p>4 know for sure, or are you just speculating?</p> <p>5 A I don't know for sure, but we</p> <p>6 had a team of people trying to close out</p> <p>7 this contract. And they sent constant</p> <p>8 correspondence to Glasswall's team leading</p> <p>9 up to the time of the default to try to get</p> <p>10 these items finished.</p> <p>11 We were under tremendous</p> <p>12 pressure to finish the building.</p> <p>13 Q So if you were under such</p> <p>14 pressure, why didn't you just say:</p> <p>15 "Hey, come on in and do the</p> <p>16 work" when they were offering to do it?</p> <p>17 A As I stated before, my feeling</p> <p>18 was, if they had ceased to exist as a</p> <p>19 company, that they had no ability to do it,</p> <p>20 that they had no resources to do it, they</p> <p>21 verbally told me they would not do it.</p> <p>22 We sent them written letters</p> <p>23 asking them to do it, and they did not.</p> <p>24 And only after this termination, did they</p> <p>25 respond. And I was advised by counsel at</p>	<p style="text-align: right;">1168</p> <p>1 Monadnock v. Glasswall - Volume IV</p> <p>2 into the proceedings.)</p> <p>3 Q I direct your attention to the</p> <p>4 entry for 1/11/2014.</p> <p>5 MR. KLEINHENDLER: Do you have</p> <p>6 the page on the bottom?</p> <p>7 MR. CINQUE: It's page 39173.</p> <p>8 This is S.</p> <p>9 MS. FODOR: Respondent's S.</p> <p>10 MR. KLEINHENDLER: What are you</p> <p>11 up to?</p> <p>12 MR. CINQUE: I am on page</p> <p>13 39173, an entry for 1/11/2014, number</p> <p>14 three.</p> <p>15 Q The lawyer's billing you for</p> <p>16 this answer to this question:</p> <p>17 "Can the performance bond cover</p> <p>18 the damages incurred by the contractor as a</p> <p>19 result of the manufacturer's late delivery</p> <p>20 of windows ordered by the contractor if the</p> <p>21 owner has never terminated the contract</p> <p>22 between the contractor and the owner?"</p> <p>23 Did you have any conversations</p> <p>24 with your lawyer about that issue?</p> <p>25 MR. KLEINHENDLER: I'm going to</p>